

H. B. 4019

(By Delegates Iaquina, Crosier, Skaff,
Lawrence, Fragale, Marshall, Rowan,
Border and Talbott

[Introduced January 12, 2012; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §48-27-505 of the Code of West
Virginia, 1931, as amended, relating to increasing the
effective period for domestic violence protective orders;
increasing the effective period for domestic violence
protective orders in cases not involving aggravating factors
from ninety days or six months to six months or one year; and
increasing the effective period for a domestic violence
protective order in cases where aggravating factors are proven
from one year to two years.

Be it enacted by the Legislature of West Virginia:

That §48-27-505 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

**§48-27-505. Time period a protective order is in effect; extension
of order; notice of order or extension.**

(a) Except as otherwise provided in subsection (d), section
four hundred one of this article, a protective order, entered by

1 the family court pursuant to this article, is effective for either
2 ~~ninety days or~~ one hundred eighty days or one year in the
3 discretion of the court. Upon receipt of a written request for
4 renewal from the petitioner prior to the expiration of the original
5 order, the family court shall extend its order for an additional
6 ninety-day period.

7 (b) Notwithstanding the provisions of subsection (a), the
8 court may enter a protective order for a period of ~~one year~~ two
9 years if the court finds by a preponderance of the evidence, after
10 a hearing, that any of the following aggravating factors are
11 present:

12 (1) ~~That~~ There has been a material violation of a previously
13 entered protective order;

14 (2) ~~That~~ Two or more protective orders have been entered
15 against the respondent within the previous five years;

16 (3) ~~That~~ Respondent has one or more prior convictions for
17 domestic battery or assault or a felony crime of violence where the
18 victim was a family or household member;

19 (4) ~~That the~~ Respondent has committed a violation of the
20 provisions of section nine-a, article two, chapter sixty-one of
21 this code against a person protected by an existing order of
22 protection; or

23 (5) ~~That~~ The totality of the circumstances presented to the
24 court require a ~~one year period in order~~ two-year period to protect

1 the physical safety of the petitioner or those persons for whom a
2 petition may be filed as provided in subdivision (2), section three
3 hundred five of this article.

4 © The court may extend a protective order entered pursuant to
5 subsection (b) of this section for whatever period the court
6 considers necessary to protect the physical safety of the
7 petitioner or those persons for whom a petition may be filed as
8 provided in subdivision (2), section three hundred five of this
9 article, if the court finds by a preponderance of evidence, after
10 a hearing of which respondent has been given notice, that:

11 (1) A material violation of the existing protective order has
12 occurred; or

13 (2) Respondent has committed a material violation of a
14 provision of a final order entered pursuant to subsection ©,
15 section six hundred eight, article five of this chapter has
16 occurred.

17 (d) To be effective, a written request to renew a ~~ninety~~-or
18 one hundred eighty-day or one year order must be submitted to the
19 court prior to the expiration of the original order period. A
20 notice of the extension shall be sent by the clerk of the court to
21 the respondent by first-class mail, addressed to the last known
22 address of the respondent as indicated by the court file. The
23 extension of time is effective upon mailing of the notice.

24 (e) Certified copies of any order entered or extension notice

1 made under the provisions of this section shall be served upon the
2 respondent by first class mail, addressed to the last known address
3 of the respondent as indicated by the court file, and delivered to
4 the petitioner and any law-enforcement agency having jurisdiction
5 to enforce the order, including the city police, the county
6 sheriff's office ~~or~~ and local office of the West Virginia State
7 Police within twenty-four hours of the entry of the order. The
8 protective order shall be in full force and effect in every county
9 of this state.

10 (f) The family court may modify the terms of a protective
11 order upon motion of either party.

12 (g) The clerk of the circuit court shall cause a copy of any
13 protective order entered by the family court pursuant to the
14 provisions of this article or pursuant to the provisions of chapter
15 forty-eight of this code to be forwarded to the magistrate or
16 magistrate court clerk and the magistrate or magistrate court clerk
17 shall forward a copy of the protective order to the appropriate
18 state and federal agencies for registration of domestic violence
19 offenders as required by state and federal law.

NOTE: The purpose of this bill is to increase the effective period for domestic violence protective orders in cases not involving aggravating factors from ninety days or six months to six months or one year and to increase the effective period for a domestic violence protective order in cases where aggravating factors are proven from one year to two years.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.